CITY OF ALAMEDA

Memorandum

To:

Honorable Mayor and

Members of the City Council

From:

John A. Russo

City Manager

Date:

October 4, 2011

Re:

Authorize the City Manager to Execute a Memorandum of Agreement Between the City of Alameda and Harbor Bay Isle Associates Regarding Application Processing and Preparation of a Property Exchange Agreement Related to a Proposal for a Land Exchange and Funding for the Chuck Corica Golf Complex Course Improvements and New Sports Fields on

North Loop Road

BACKGROUND

On November 6, 2008, the City Council authorized the City Manager to enter into a one-year agreement with KemperSports Management to provide interim management of the Chuck Corica Golf Complex (December 2008-December 2009). In July 2009, staff prepared a Request for Proposals seeking a long-term operator to provide management, operational, and maintenance functions on a long-term lease basis. The City was also looking for a firm willing to invest much-needed funds in capital improvements, an investment the City had been unable to make for many years. Following an extensive review, the City Council approved the selection of KemperSports Management on March 16, 2010, and directed staff to begin negotiations for a long-term agreement. Between March 2010 and December 2010, City staff worked with KemperSports Management to develop a number of scenarios for the future long-term operation of the Chuck Corica Golf Complex.

On April 12, 2011, the City Council held a special meeting regarding golf in order to discuss a revised Kemper proposal in which Kemper would have retained the existing 36-hole course configuration and made improvements to the golf course and the driving range. The funding for the improvements would have been taken from revenues from the course and not from KemperSports Management. The renovations included work on the drainage and irrigation, renovation of the driving range, replacing the greens on the Jack Clark Course, renovating the tees and bunkers on the Jack Clark Course, and repairing the cart paths.

At the April 12, 2011, meeting, Mr. Tim Hoppen, President of Doric Realty (Harbor Bay Isle Associates, HBIA), asked the City Council to delay making a decision on the Kemper proposal and consider an alternative proposal in which the City would "swap" the Mif Albright 9-hole course for land that HBIA owns on North Loop Road. The City

City Council Agenda Item #6-C 10-04-11 Council agreed to delay its decision on the Kemper proposal in order to allow HBIA an opportunity to further develop its proposal.

On July 12, 2011, the City Council held a meeting to hear HBIA's "swap" proposal in more detail. The HBIA proposal included the following elements:

- The City and HBIA would "swap" 12.2 acres at North Loop Road for the 12.2 acres currently occupied by the Mif Course.
- The City and Kemper would rebuild the Mif Course adjacent to the reconfigured and improved Jack Clark 18-hole Golf Course.
- The City would build new playing fields on the North Loop Road site.
- HBIA would contribute \$5 million to the construction of the Golf Course improvements and the playing fields.
- HBIA would work with the North Loop Business Association, and the Harbor Bay Business Park to identify additional private funds for the construction and maintenance of the playing fields.
- HBIA would seek to entitle the Mif Albright property for up to 116 homes.

After hearing public comment on the proposal, the City Council directed staff to study the proposal and return with the results of that analysis and a firm proposal for moving forward. Since the July 12, 2011 City Council meeting, staff has been meeting with HBIA and evaluating the feasibility of the proposal. This work has resulted in a recommended draft Memorandum of Agreement (MOA) with HBIA that would document a process for further evaluation and decision-making (Exhibit 1). HBIA has covered all of the staff costs, including consultant and legal costs, associated with the work completed to date.

DISCUSSION

Given that the City Council cannot make any final decisions on the wide range of actions that would be needed to accomplish the proposal until such time that a complete environmental review has been completed, City staff and HBIA have been focusing recent discussions on a draft MOA. This agreement would establish a process by which HBIA and the City would work together to further develop, further evaluate, and ultimately, make a decision as to whether the proposal is in the best interests of the City of Alameda.

Approval of the MOA by the City Council and HBIA <u>does not</u> represent an approval of the proposal, nor does approval of the MOA commit the City Council to approve the proposal at a future date. Approval of the MOA by the City Council and HBIA establishes a process by which both parties (the City and HBIA) will work together to further evaluate the proposal and establishes a source of funds for the City of Alameda to complete a full evaluation of the HBIA Proposal.

The draft MOA includes the following terms:

- <u>Term</u>: HBIA and the City will work together to further evaluate the proposal until a final decision is made by the City Council on the proposal or March 31, 2012, whichever comes first.
- <u>Costs</u>: HBIA will cover all costs, including City staff time and City consultant time, including legal services, to evaluate the proposal and prepare all necessary documents and reports, including the Environmental Impact Report (EIR), exchange agreements, and all legal and financial documents for City Council consideration.
- <u>Products</u>: The objective of the work to be completed under the MOA is a package of documents for community and City Council consideration. The package would include:
 - 1. An EIR evaluating all environmental aspects of the proposal. (To inform the planning effort and the MOA discussions, work on the EIR has already begun with funds provided by HBIA.)
 - 2. A draft resolution, a draft ordinance, and a Planning Board recommendation on the proposed re-designation and rezoning of the Mif property from Open Space to Residential.
 - 3. A draft resolution and a Planning Board recommendation on a tentative map for up to 130 single family homes on the Mif property. (See Exhibit 2 for a conceptual layout of 130 lots on the Mif property.)
 - 4. A draft amendment to the 1989 Harbor Bay Development Agreement (DA) to include the new 130-unit "village".
 - 5. A recommendation from the Golf Commission on the proposed reconfiguration of the Jack Clark Course to accommodate the relocated Mif 9hole Course. (See Exhibit 3 for a conceptual draft layout of the reconfigured course.)
 - 6. A draft resolution, a draft ordinance, and a Planning Board recommendation on the proposed re-designation and rezoning of North Loop Road from Commercial Manufacturing to Open Space in the General Plan and Zoning Ordinance.
 - 7. A recommendation from the Recreation and Park Commission on the proposed recreational facilities on the North Loop Road. (See Exhibit 4 for a conceptual layout for new playing fields at North Loop Road.)

- 8. A draft Property Exchange Agreement (PEA) for the "swap" of the two properties. HBIA would give the City 12.2 acres of land that it owns on North Loop Road, and the City would give HBIA 12.2 acres owned by the City and currently occupied by the Mif Albright 9-hole course.
- <u>City Commitments</u>: Per the draft MOA, the City is committed to work expeditiously
 to complete the package of documents described above and bring the products to
 the Boards, Commissions, and City Council for consideration. Per the MOA, the City
 Council retains the ability and right to deny or amend the packages without incurring
 any financial penalties or repaying any of the costs incurred by HBIA in producing
 the package of documents.
- Financial Contributions: If the City Council approves the package of documents described above, including the PEA, DA Amendment, and a 130-unit Tentative Map. then HBIA would provide the City with \$7.2 million in addition to the 12.2 acres of land on North Loop Road valued at approximately \$8 million in the City's appraisal, in exchange for the rezoned Mif property and the development rights afforded to HBIA under the amended development agreement. The Mif property was appraised at approximately \$9 million assuming entitlements for 116 homes would be pursued on 14 acres. The \$7.2 million would be made available to the City within a specified time after approval of the PEA for the City to use for, among other things, reconfiguration and improvement of the Golf Complex, relocation of the 9-hole course, and building the sports complex on North Loop Road. If the City Council approves the package, and if for some reason HBIA were unable to provide the funds, the City would retain a \$200,000 deposit toward the payment provided by HBIA upon approval of the MOA. In the event that the City Council approves the package, but in the process, reduces the number of units or requires off-site improvements as conditions on the Map (e.g. traffic, sewer, and storm drain improvements) that exceed \$2.5 million in costs, HBIA has the right to reject the proposal without losing its \$200,000 deposit.
- Additional Financial Partners: HBIA will work with the North Loop Road Business Association, the Harbor Bay Business Park Association, and companies located near the North Loop Road site to contribute additional funding for construction and maintenance of the sports facilities so that no public dollars are required to implement and maintain the sports fields. User fees are also anticipated to be an important source of funds for the maintenance of the fields.

Major Issues to be Evaluated During the MOA Period:

If the City Council chooses to enter into the recommended MOA, the community should be aware that there are still a number of major issues to be resolved. The MOA is designed to provide a process whereby the major issues can be studied, solutions can be recommended, and the City Council can be better informed before making a final decision on the proposal. Some of the major issues include: <u>Traffic, Sewer, Storm Drain and Off-site Costs:</u> From the City's perspective, it will be
essential to ensure that the proposal does not result in unacceptable off-site impacts
(e.g. traffic, sewer, flooding) on the Bay Farm island community, and that the City is
not faced with unexpected costs to improve these types of facilities in the future as a
result of the project.

Traffic on Island Drive in the morning commute hour is currently a major concern for many Bay Farm Island residents. Through the EIR process and the Planning Board hearings, the City staff and consultants will attempt to develop a series of transportation improvements that will minimize the impact of the additional traffic generated by the proposal on the Bay Farm Island community. City staff and a team of consultants are also currently studying how best to provide storm water and sewer service for the new homes on the Mif property. The community's reaction and comfort with the traffic solutions and the other off-site issues will be important to the Planning Board's recommendations and the City Council's ultimate decision on the project

- North Loop Road Proposed Sport Fields Plan, Construction and Maintenance Costs: The MOA provides an opportunity to further study and evaluate the costs of building and maintaining the new playing fields proposed at North Loop Road. Ensuring that the City has the necessary resources identified to build and maintain the sports fields will be essential information for the City Council's final deliberations on the proposal. The Recreation and Park Commission's recommendations will also be critical input to the final deliberations, as will the recommendations of the North Loop Road Business Association.
- Golf Course Complex Improvement Plan and Costs: The MOA provides an opportunity to further study and evaluate the proposed reconfiguration of the Jack Clark Course and the costs to move the 9-hole course and improve the Chuck Corica Golf Complex. In order to ensure that the new Mif Course can fit on the existing Jack Clark Course property, HBIA hired Gary Linn of Knott & Linn, a golf course designer, to develop the plan for the course. That plan (Exhibit 3) preserves 18 championship holes on the Jack Clark Course while allowing for a new Mif Albright Par 3 course that utilizes land on the Jack Clark Course as well as some of the undeveloped land near the Driving Range. Over the course of the next few months, the staff and consultant team will continue to work with Kemper, Recreation and Parks staff and others to ensure that the City has the necessary resources identified to make these improvements. The Golf Commission's advice on the proposed reconfigurations will also be important input to the City Council's ultimate decision on the project.

FINANCIAL IMPACT

Entering into the MOA would not have a financial impact on the General Fund. Per the MOA, HBIA would cover all of the City costs incurred during the MOA period.

RECOMMENDATION

Authorize the City Manager to execute a Memorandum of Agreement between the City of Alameda and Harbor Bay Isle Associates regarding application processing and preparation of a Property Exchange Agreement related to a proposal for a land exchange and funding for the Chuck Corica Golf Complex Course improvements and new sports fields on North Loop Road.

Respectfully submitted,

Andrew Thomas

Planning Services Manager

Exhibits:

- 1. Draft Memorandum of Agreement between HBIA and the City of Alameda
- 2. Preliminary layout for 130 homes on Mif Site
- 3. Preliminary layout for reconfiguration of Jack Clark Golf Course
- 4. Preliminary layout for sports fields on North Loop Road

MEMORANDUM OF AGREEMENT

BETWEEN CITY OF ALAMEDA AND HARBOR BAY ISLE ASSOCIATES REGARDING APPLICATION PROCESSING AND PREPARATION OF PROPERTY EXCHANGE AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("MOA"), dated this ____ day of October 2011, is entered into by and between the City of Alameda ("City") and Harbor Bay Isle Associates ("HBIA"). The City and HBIA may be collectively referred to as the "Parties."

RECITALS

- A. The purpose of this MOA is to set forth terms, conditions, and parameters by which the City and HBIA will negotiate the definitive terms of a property exchange or similar agreement ("PEA") that will provide the City with land and funding for new and improved golf and recreational facilities and will provide HBIA with an improved location for development of approximately 130 proposed residential units within the City. This MOA also establishes the framework for the City's processing of applications for city approvals required in connection with the PEA and reimbursement by HBIA of all city expenditures and costs associated with the processing of such applications, including the environmental review required for such city approvals.
- B. The City owns the Chuck Corica Golf Complex ("Golf Complex"), which consists of the 18-hole North Course, the 18-hole South Course, the 9-hole Mif Albright Par 3 Course, a driving range, and related facilities. The Golf Complex will benefit from capital improvements and a viable long-term financing plan made possible by this transaction. The City also is in need of additional sports fields that can be used by Alameda residents.
- C. HBIA owns 12.22 acres of land on North Loop Road ("NLR Property") zoned for commercial use in the Harbor Bay Business Park. HBIA has filed an application to develop residential units on the NLR Property as part of a project called Village Six, but has suspended processing this application while HBIA and the City discuss potential alternative locations for the residential units proposed to be built by HBIA on the NLR Property. One of those alternative sites is a 12.22 acre site which is part of the City's current Mif Albright Par 3 course ("Mif Property").
- D. Based on input from city staff and representatives of all interested parties, the City and HBIA wish to pursue a PEA and necessary city approvals that would facilitate an exchange of the NLR Property and the Mif Property between them so as to allow the development of sports and recreational facilities on the NLR Property, redevelopment of the Mif Par 3 course and other improvements on the Golf Complex, and development of approximately 130 residences on the Mif Property. A conceptual plan for development of the NLR Property with public sports fields is attached as Exhibit A. A conceptual plan for development of approximately 130 residential units on the Mif Property ("Project") is attached as Exhibit B. A conceptual plan for development of approximately 130 residential units on the Mif Property ("Project") is attached as Exhibit C.
- E. The Parties understand and agree that City Council approval is required prior to execution of the PEA and related approvals contemplated by this MOA, that such City Council approval will be determined on its merits, in accordance with City processes, and that the City has not predetermined the outcome of any application or approval request. This MOA does not

commit the City to a definite course of action with regard to the PEA or any of the approvals contemplated by this MOA. The City shall fully consider, and shall have all power and authority pursuant to this MOA to select, approve, and implement, any alternative to the approvals contemplated by this MOA, including a "No Project" alternative. The City also shall fully consider, and shall have all power and authority pursuant to this MOA to select, approve, and implement, the full range of mitigation measures that may be appropriate to reduce or avoid potential environmental effects of the PEA and the related approvals pursuant to the California Environmental Quality Act ("CEQA").

F. In the judgment of the City Council, acting in the best interests of the people of the City, and in exercise of its police power regarding the beneficial management of City property, this MOA represents an appropriate approach for advancing all interests associated with improving public golf and other sports facilities and locating residential units in the City with no net loss of City parkland and at no cost to the City.

IN CONSIDERATION OF THE FOREGOING FACTS, AND THE MUTUAL COVENANTS AND PROMISES CONTAINED IN THIS MOA, THE PARTIES AGREE AS FOLLOWS:

1. <u>Effective Date & Term.</u> This MOA shall become effective on the date this MOA is fully executed by the Parties ("Effective Date"). This MOA shall terminate upon the earlier of (i) full execution by the Parties of the PEA, or (ii) March 31, 2012 ("MOA Termination Date"), unless such termination date is modified pursuant to Section 6 or Section 15 below.

2. Processing of Applications for City Approvals.

- 2.1 <u>Initial Applications.</u> By October 31, 2011, HBIA shall submit substantially complete applications for the following in connection with the Project (the "Initial Applications"):
- (a) General Plan Amendments to change the land use designation of the NLR Property from "Business Park" to "Parks & Public Open Space" and to change the land use designation of the Mif Property from "Parks & Public Open Space" to "Medium-Density Residential"; and
- (b) Rezonings of NLR Property from "C-M-PD" (Commercial Manufacturing with a Planned Development overlay) to "O" (Open Space) and of the Mif Property from "O" (Open Space) to "R-2/PD" (R-2 Residential with a Planned Development overlay).
- 2.2 <u>Subsequent Applications.</u> By November 30, 2011, HBIA shall submit substantially complete applications for the following land use approvals in connection with the Project (the "Subsequent Applications"); collectively, the Initial Applications and the Subsequent Applications are referred to as the "Applications"):
- (a) A Tentative Subdivision Map for the subdivision of the Mif Property into approximately 130 residential units ("Tentative Map");
- (b) A Development Plan establishing the development standards, restrictions, guidelines, minimum lot sizes, public rights of way, and access points for residential development of the Mif property ("Development Plan"). The Development Plan, if adopted, shall

run with the land and shall govern the review of all subsequent approvals of the Mif Property, including the Tentative Map; and

- (c) An Amendment to the existing 1989 Harbor Bay Development Agreement ("Development Agreement") between the City and HBIA to remove the NLR Property from the area covered by the DA and to include the Mif Property ("DA Amendment"). Under the DA Amendment, the NLR Property will no longer benefit from any of the provisions of the Development Agreement or be subject to any of its obligations. Under the DA Amendment, the Mif Property will be treated for all purposes as if it had been and continues to be subject to the Development Agreement from the time the Development Agreement went into effect. The DA Amendment also will protect the approvals for development of approximately 130 single-family residential units on the Mif Property.
- 2.3 <u>Processing Generally.</u> The City shall endeavor to consider and act upon the Applications by March 31, 2012. The Parties acknowledge that the City's ability to consider and act upon the Applications is contingent upon compliance with CEQA, prerequisite information being provided to the City (including information from HBIA), and the requirement that the City Council exercise its independent discretion in deciding whether to grant the approvals sought in such Applications ("Approvals").

3. Property Exchange Agreement.

3.1. <u>Preparation.</u> The City and HBIA shall negotiate and jointly prepare for City Council consideration a PEA formalizing the terms of the property exchange proposed by this MOA. The Parties anticipate that the City Council will consider and act upon the PEA at the same time as the Applications, pursuant to Section 2.3 above.

3.2 <u>PEA Contents.</u> It is anticipated by the City and HBIA that the PEA shall:

- 3.2.1 Provide that, in the event the City grants the Approvals and such Approvals (a) grant the right to develop 130 single-family residential units or any lesser number of residential units HBIA may have requested in the Applications, (b) require than HBIA contribute no more than \$2,500,000 toward projected off-site costs, based upon professionally prepared estimates of such improvement costs, and (c) impose no more fees or exactions than those that that are permitted under the Development Agreement or are required by the environmental review process under CEQA, then HBIA shall be required to proceed with the property exchange pursuant to the terms of the PEA.
- 3.2.2 Provide further that no later than three (3) business days before the PEA Closing Date (defined in Section 3.2.3 below), the Parties shall provide documents and place funding into an escrow account to achieve the following at closing:
- (a) The City's conveyance and delivery of possession of the Mif Property to HBIA or its designee;
- (b) HBIA's conveyance and delivery of possession of the NLR Property to the City; and
- (c) HBIA's advance payment of fees and charges for the development and improvement of the Mif Property in the amount of \$7,200,000, inclusive of any prior deposits made pursuant to this MOA into an escrow for the benefit of the City to allow, among

other things, improvements to the Mif Property and the NLR Property for recreational purposes in exchange for the Mif Property and the City's approval of the Applications, including the DA Amendment.

- 3.2.3 Provide for the closing of the property exchange and related transactions to occur within forty-five (45) days after environmental review under CEQA, all Initial Approvals, and the PEA are final and beyond any further appeal ("PEA Closing Date").
- 3.2.4 Provide that on each of up to three occasions, HBIA, in its sole discretion, may extend the PEA Closing Date by ninety (90) days, provided HBIA is in substantial compliance with all material terms of the PEA and HBIA pays a deposit of \$200,000 into the escrow established under Section 4 for each extension, which shall be applied against the remaining payment due at closing.
- 3.2.5 Provide that failure by HBIA to close by the PEA Closing Date, including any extensions as provided, will result in termination of the PEA and the DA Amendment.
- 3.2.6 Provide that the Initial Deposit (defined in Section 4 below) and any deposits made under Section 3.2.4 shall be retained by the City as liquidated damages in the event of termination described in Section 3.2.5.
- 3.2.7 Provide that, in the event the Parties fully execute both the PEA and the DA Amendment and either document is subsequently set aside in the event of legal challenge, both agreements shall be terminated and the City shall refund to HBIA the Initial Deposit within thirty (30) days.
- 3.2.8 Provide that the exchange of the NLR Property and the Mif Property shall be "AS IS" and the representations of the transferor shall be limited to commercially standard representations in an "AS IS" transaction. The Parties agree that because the transaction is an exchange of property, no transfer tax shall be applicable to either party in connection with the exchange of the two properties, but transfer taxes shall be applicable to subsequent sales of homes constructed on the Mif Property. All closing costs shall be payable as is customary in commercial transactions in the City. Title shall be evidenced by an ALTA policy provided that the transferee has obtained a survey acceptable to the title company chosen by the Parties to handle the escrow for the transfers contemplated.
- 3.2.9 Incorporate the provisions of Section 2 and Sections 8 through 14 of this MOA regarding processing, CEQA review, reimbursement by HBIA of all City and Consultant costs, and the Evergreen Account, all of which shall continue to apply for as long as the City is processing the Applications.
- 3.2.10 Establish a transaction structure that permits treatment of the transaction by HBIA as a tax-free exchange of property.
- 3.2.11 Identify the Parties' rights and obligations regarding the development of the Properties, comply with applicable provisions of the Alameda City Charter for disposition of public park land, and confirm the public benefit to the City.
- 3.2.12 Provide for use of the Escrow previously established by this MOA and for the deposits and payments required to be made into Escrow.

- 3.2.13 Provide that HBIA shall have the right to sell, assign, or transfer its rights under the PEA to any third parties or entities.
- 3.2.14 Include those terms the Parties determine are necessary to effectuate the intentions of the Parties.
- 4. <u>Initial Deposit.</u> Within fifteen (15) business days of approval by the City Council and execution by the City Manager of this MOA ("Initial Deposit"), HBIA shall pay into an escrow established by the parties under this MOA with a mutually acceptable escrow agent, a \$200,000 deposit.
- 5. <u>Additional Payment.</u> In addition to the advance payment of development and improvement fees provided for in Section 3.2.2(c) above, HBIA shall pay an additional amount to the City of Three Hundred Thousand Dollars (\$300,000) upon the City's issuance of the first building permit for the Project, which amount shall be used to pay for and offset the costs of offsite improvements that are directly and substantially related to, and for the specific benefit of the Project. Such advance payment shall count toward HBIA's contribution toward projected off-site costs, as discussed in Section 3.2.1.

6. <u>Modification of MOA Termination Date.</u>

- 6.1 <u>City Manager's Extensions.</u> On up to two occasions, the City Manager, in his sole discretion, may extend the MOA Termination Date by ninety (90) days, provided HBIA gives ten (10) days' written notice of such request, as provided in Section 20 below, prior to the MOA Termination Date, and the City Manager first finds HBIA is in substantial compliance with all material terms of this MOA; and
- 6.2 <u>Automatic Extensions.</u> The MOA Termination Date shall be automatically extended as follows: Provided that HBIA files substantially complete Applications as required by Section 2 above, the MOA Termination Date shall be extended automatically if, due to City actions or inactions, the City has not completed environmental review under CEQA or processed the Applications such that staff is unable to present to the City Council for its consideration the Applications and the PEA by March 31, 2012. Such extension shall continue until the Applications and the PEA are presented to the City Council and the City Council has made a final decision with regard to the Applications and the PEA; in the event the City Council approves the Applications and the PEA, the extension shall further continue until the PEA and the DA Amendment are fully executed by the Parties.
- 6.3 <u>Automatic Default.</u> In the event HBIA fails to pay the Initial Deposit in the amount and by the date specified in Section 4 above, such failure shall be considered a default subject to the provisions of Section 15 below.
- 6.4 <u>HBIA Right to Terminate.</u> HBIA shall have the right to terminate this MOA:
- (a) For any reason, upon ten (10) days' written notice to the City as provided in Section 20 below;
- (b) Upon three (3) days' notice if City staff recommends, in a report to the Planning Commission or the City Council, that the Approvals (i) grant the right to develop fewer than 130 single-family residential units or fewer than such lesser number of residential units

HBIA may have requested in the Applications, (ii) require that HBIA contribute more than \$2,500,000 toward projected off-site costs, based upon professionally prepared estimates of such improvement costs, or (iii) impose more fees or exactions than those that that are permitted under the Development Agreement or are required by the environmental review process under CEQA; or

- (c) Immediately, and without prior notice, if one or more members of City Council, when City Council is preparing to vote on the Approvals, moves to grant the Approvals and such Approvals include any of the three (3) items identified in Section 6.4(b) above.
- 6.5 <u>Further Rights and Obligations.</u> Upon termination under Section 6.4, neither party shall have any further right or obligation pursuant to this MOA, except for HBIA's indemnification and reimbursement obligations in connection with work performed and costs incurred during the effectiveness of the MOA, which obligations shall survive termination until they are satisfied in full.
- 6.6 <u>Retention of Initial Deposit.</u> In the event HBIA exercises its right to terminate this MOA under Section 6.4(a), the City shall retain the Initial Deposit.
- 6.7 <u>Refund of Initial Deposit.</u> In the event HBIA exercises its right to terminate this MOA under Section 6.4(b) or Section 6.4(c), the City shall refund to HBIA the Initial Deposit within thirty (30) days.
- 7. HBIA's Work with Harbor Bay Business Park. HBIA shall make commercially reasonable efforts to work with other property owners and businesses in the Harbor Bay Business Park to encourage them to agree to make financial contributions to the cost of construction of the new sports fields and related facilities, and to encourage them to arrange for the ongoing maintenance of the sports fields and related facilities to be included in the scope of work of the Harbor Bay Business Park Zone of the City's Island City Landscape and Lighting District 84-2 and paid for from assessments levied on the properties in the Harbor Bay Business Park.
- HBIA's Reimbursement of the City's Costs. HBIA shall reimburse costs the City incurs as provided in this Section 8. The Parties agree that the permits and planning requests to be reviewed, evaluated, considered, and processed by the City shall be those in the Applications. HBIA agrees to provide the "Technical Reports" (defined in Section 9 below) and any other information reasonably required for the City's environmental review process. The City's processing of applications for which deposits shall be made pursuant to this Agreement shall include, without limitation: (a) all work that facilitates the City's review, evaluation, consideration, and processing of: (i) the Applications, (ii) the Project, (iii) Technical Reports submitted in support of the Applications or developed by the City or its consultants, (iv) supplements or amendments to the Applications and any accompanying data, submittals, and materials, and (v) any supplementary or additional material provided by HBIA or developed by the City or its consultants; (b) preparation by the City and its consultants of Technical Reports and related material, documentation, and data relating to the Applications, including but not limited to supplemental or additional Technical Reports, as well as review, evaluation, consideration, and internal and external communication regarding such supplemental or additional Technical Reports; and (c) negotiation and preparation of a PEA and DA Amendment and/or other agreements deemed necessary by the City to protect its interest in the event any of the Applications are approved. Expenses for which HBIA shall deposit funds with the City pursuant to this and any other section of this Agreement may include (x) staff time and

expenses at rates consistent with those charged to other applicants on major planning projects, (y) consultant fees and costs (including, without limitation, costs and fees of specialized legal counsel retained to assist city staff and the City's consultants); and (z) any other items that are agreed to in writing by the City and HBIA.

Environmental Review. The City will act as lead agency under CEQA. HBIA understands that the environmental consultant, or its subconsultants or designees, will prepare. at HBIA's cost, and submit to the City any and all studies and evaluations that may be requested as a part of the City's CEQA review and planning processes, including, without limitation, studies and evaluations covering issues such as air quality; energy and greenhouse gas emissions; biological resources; cultural resources; hazardous materials and related issues; hydrology and water quality; noise; transportation; water supply; wastewater and stormwater; fiscal reports; planning studies; and others that may be required in the City's discretion (collectively, the "Technical Reports"). Before the City requests any Technical Report, it shall notify HBIA of the request and explain the reasons for the request. The City shall allow HBIA a reasonable amount of time to review the request and, if HBIA disagrees with the request or its scope, to discuss the request with the City. If the Parties are unable to agree upon the request. the City may proceed with any Technical Report it determines is necessary to complete its environmental review under CEQA. The City will review and consider the Technical Reports in the preparation of its environmental evaluation under CEQA and its consideration of the Applications. HBIA acknowledges and agrees that the City must independently review and exercise its independent judgment with respect to the content and conclusions of the Technical Reports and may in its discretion retain peer review consultants or rely upon its own staff, at HBIA's cost, to review and comment on the Technical Reports, or to provide such supplemental or additional Technical Reports, evaluations, analysis, and internal or external communications as the City may deem necessary or desirable, during the environmental review and planning process.

10. Consultants.

- 10.1. Prior to selecting any consultant or subconsultant to be retained by the City under this Agreement (each, a "Consultant"), which shall include but not be limited to the environmental consultant and any outside counsel retained by the City, the City shall provide HBIA with information relative to such Consultant, and the proposed scope and budget for such Consultant; provided, however, that the ultimate selection and retention of any Consultant shall be made by the City in its sole discretion.
- 10.2 The City shall deliver to HBIA copies of all proposed consultant contracts and subcontracts (collectively, "Consultant Contracts"), including budgets and scopes of work, and any proposed amendments of previously approved Consultant Contracts. All Consultants retained by the City pursuant to this MOA will report to the City. HBIA agrees that the City will charge actual staff time and expenses attributable to the administration of Consultant Contracts entered into by the City under this Agreement.
- 10.3 The City shall on a monthly basis deliver to HBIA copies of invoices from all Consultants. HBIA may review those invoices and inform the City in writing of any dispute that it may have within fifteen (15) days of receipt of such invoice. HBIA may ask the City to withhold payment from the Consultant and, upon such request by HBIA, the City shall temporarily withhold payment of such invoice. The City shall not be required to withhold payment of any invoice for more than ten (10) days following a request by HBIA to withhold payment. During such ten (10) day period, the City shall: (i) upon request by HBIA, meet in

person with a representative of HBIA up to two times to discuss the disputed invoice, and (ii) in good faith review and consider the objections by HBIA regarding the disputed invoice. In the event that the City and the HBIA are not able to agree within such ten (10) day period on a course of action with respect to the invoice, it shall be within the City's exclusive and sole discretion to pay the disputed invoice in full and HBIA shall be responsible for the full cost of the City's payment of the invoice so long as such invoice relates to the City's review, evaluation, consideration, or processing of the Applications.

- 10.4 All proposed Consultant Contracts shall provide that (i) Consultants shall bill only for their actual costs, with no premiums or surcharges on costs, expenses, subconsultants or otherwise; (ii) copies of all invoices and appropriate supporting documentation, except those of outside counsel to the City, shall be made available to HBIA, subject to the exception described in Section 10.5; and (iii) Consultant invoices shall include sufficient detail regarding work performed and time incurred to allow reasonable review by the City and HBIA.
- 10.5 Nothing in this Agreement shall be construed to require the City to provide HBIA with documents, or portions of documents that are privileged, attorney work product, or attorney-client privileged.
- 10.6 In the event no PEA is executed by the City and HBIA prior to termination of this MOA, then within thirty (30) days following termination, the City shall deliver to HBIA electronic copies (or hard copies if electronic versions do not exist) of all work prepared to date by any Consultant, whether in draft or final form and in the City's files as of such date, including without limitation, all studies, reports, plans, drawings and similar work (the "Consultant Work"). With respect to work not in the City's files as of the date for compliance with this section, the City shall have no obligation beyond making a request that Consultant provide all work to the City. If Consultant Work has not been approved or adopted by city staff in writing, HBIA shall keep such work, including any documentation thereof in whatever form, confidential, and shall not share such work with any member of the public unless the City consents to such disclosure or such disclosure is required by law. HBIA shall hold the City, its officers and employees, harmless from and against any and all costs, including attorneys fees, damages, or liabilities incurred by HBIA and arising from HBIA's reliance on any Consultant Work that is delivered to HBIA in accordance with this Section 10.6. This obligation to hold the City harmless shall survive termination of this MOA pursuant to Section 1 above.
- 11. <u>Evergreen Deposit</u>. HBIA shall establish and fund a deposit account with the City, designed to ensure that the City is never required to perform work for which reimbursement funds have not been previously deposited (the "Evergreen Deposit") in accordance with a separate reimbursement agreement to be executed contemporaneously with this MOA.
- 12. <u>City's Discretion & Independent Judgment.</u> The Parties understand and agree that the City will perform an independent environmental review of the Approvals contemplated by this MOA and the PEA and the impacts associated with any contemplated development pursuant to the Approvals. The City retains its authority to certify or decline to certify an Environmental Impact Report ("EIR") in connection with the Applications, may consider and adopt any alternative to any development proposed by the Applications, including the "No Project" alternative, and may impose any conditions or mitigation measures on any Approvals as the City deems appropriate. Nothing in this MOA commits the City to any approval, vote or other outcome of the environmental review, any approval process, or action on the Applications.

-8-

This MOA shall not be construed as any preliminary or final approval of any land use decision and/or other discretionary process or approval not yet given by the City.

13. <u>Indemnification & Cooperation in the Event of Legal Challenge.</u>

- 13.1 <u>HBIA Processing Challenge.</u> An "HBIA Processing Challenge" is any claim, demand, proceeding, application, petition, complaint or action filed, brought, or otherwise commenced by HBIA, seeking to review, challenge, set aside, modify, overturn, supersede, or annul the City's review, evaluation, consideration, processing, or disposition of or decisions regarding the Approvals sought in the Applications. An HBIA Processing Challenge includes any such claim, demand, proceeding, application, petition, complaint or action in which HBIA purports to act as a "private attorney general." As to an HBIA Processing Challenge, HBIA and the City shall each remain liable for their respective attorneys' fees and costs of litigation and costs of experts and consultants retained in such litigation.
- Indemnification for Project-Related Challenges. A "Project-Related Challenge" is: (i) any claim, demand, proceeding, application, petition, complaint or action filed, brought, or otherwise commenced by a third party seeking to review, challenge, set aside, modify, overturn, supersede or annul any provision of this MOA or the City's performance hereunder, or the City's review, evaluation, consideration, processing, or disposition of or decisions regarding the Applications or Approvals or a portion thereof and any combination thereof; or (ii) any other claim, demand, proceeding, application, petition, complaint or action filed, brought or otherwise commenced by HBIA (other than an HBIA Processing Challenge) or by a third party relating to the Approvals or any development contemplated thereunder or a portion thereof and any combination thereof, including those actions where the City determines, in its sole discretion, that it is obligated to defend the challenged action even if the effect of such action would be to impede development pursuant to the Approvals. As to any Project-Related Challenge by HBIA, HBIA shall be liable for, and shall reimburse to the City, the City's attorneys' fees and costs of litigation and costs of experts and consultants retained in such litigation. As to any Project-Related Challenge by a third party, HBIA shall fully indemnify, defend, release, and hold harmless the City, its officers, its employees, its consultants, and their agents from all financial and other liability related to such Project-Related Challenge, including but not limited to attorneys' fees and costs of litigation and costs of experts and consultants.
- 13.3 Cooperation in the Event of a Project-Related Challenge. In the event of any Project-Related Challenge by a third party, the Parties shall cooperate in defending against such challenge. Each Party shall promptly notify the other of any Project-Related Challenge by a third party of which it becomes aware. HBIA shall assist and cooperate at its expense with the City in connection with any Project-Related Challenge by a third party. If HBIA fails to make payment to the City for any costs in connection with defense of a Project-Related Challenge, as required by Section 13.4 below, the City shall have no obligation to continue its defense.
- 13.4 Reimbursement Relating to Project-Related Challenge. The City may use its own legal staff or outside counsel in connection with defense of any Project-Related Challenge, in the City Attorney's sole discretion, and the City shall have the right to select outside counsel of its choice, in its sole discretion. All costs to the City associated with its defense of any Project-Related Challenge, including but not limited to the time and expenses of the City Attorney's Office, other city staff, any Consultants or experts retained in connection with the Project-Related Challenge, attorneys' fees of the City's selected outside counsel, and litigation costs shall be fully reimbursed to the City by HBIA; provided HBIA shall have the right to monthly invoices for all such costs in the case of a Project-Related Challenge by a third party.

HBIA shall make payment to the City for any costs covered by this Section 13 within thirty (30) days of receipt of an invoice from the City for such costs.

- 13.5 <u>Limitation on Remedies.</u> In any action at law or equity or other legal or administrative proceeding arising out of or relating to this MOA, the PEA, the Applications, the City's review, evaluation, consideration, processing or disposition of the Applications, or the Approvals, including but not limited to any HBIA Processing Challenge or Project-Related Challenge, neither the City nor HBIA shall be entitled to damages or other remedies or relief except as expressly set forth in this Section 13.5. Permitted remedies shall include (i) mandatory or injunctive relief, (ii) writ of mandate, (iii) specific performance or termination of this MOA or the PEA, or (iv) a claim for reimbursement of unexpended funds advanced by HBIA to the City. Without limiting the generality of the foregoing, neither the City nor HBIA shall be liable, under any circumstances, for any direct, indirect, special, compensatory, consequential, reliance, punitive or exemplary damages, regardless of whether the claim for such damages is based on contract, tort, statute or other basis liability.
- 13.6 <u>Continuing Rights, Obligations.</u> The rights and obligations set forth in this Section 13 and in Section 14 shall survive termination of this MOA.
- 14. <u>Cooperation with Golf Management Company</u>. The Parties acknowledge that the City and HBIA will work in good faith with, and, consistent with this MOA, will coordinate their activities and plans with, any company that is under contract with the City to manage or lease the Golf Complex.
- 15. Default. If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms of this MOA, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party and demand the default to be cured within five (5) days of the notice. The Parties shall meet and confer regarding the alleged default no later than five (5) days after the notice. If the defaulting party is in default under this MOA and if the default is reasonably curable within a reasonable time not to exceed twenty (20) days, then the defaulting party shall have a reasonable period of time to cure the default provided that the defaulting party provides reasonable assurance, to the demanding party, within five (5) days after the demanding party's written notice of default, that the defaulting party has the intention and the capacity to cure the default within a commercially reasonably period, not to exceed twenty (20) days after the original notice of default was given. If the defaulting party does not give such reasonable assurance or it the defaulting party does not promptly undertake and diligently continue all reasonable actions to cure the default or if the default is not cured within such a reasonable time, not to exceed twenty (20) days, then the demanding party may terminate this MOA by giving notice to the defaulting party and, if such notice is given, then this MOA shall terminate. In the event of termination hereunder, neither party shall have any further rights or obligations pursuant to this MOA, except for HBIA's obligations to indemnify and reimburse the City for its costs and expenditures, which obligations shall survive termination. In the event the City terminates this MOA under this Section 15, the City shall retain the Initial Deposit. In the event HBIA terminates this MOA under this Section 15, the Initial Deposit shall be returned to HBIA.
- 16. <u>Modifications</u>. This MOA may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

- 17. <u>Waivers</u>. Waiver of a breach or default under this MOA shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this MOA.
- 18. <u>Severability</u>. In the event any term of this MOA is held invalid by a court of competent jurisdiction, the MOA shall be construed as not containing that term, and the remainder of this MOA shall remain in full force and effect.
- 19. <u>Entire Agreement</u>. This MOA, including all documents incorporated herein by reference such as <u>Exhibit A</u>, <u>Exhibit B</u>, and <u>Exhibit C</u>, comprises the entire integrated understanding between the Parties concerning the purpose of this MOA, as identified in Recital A. This MOA supersedes all prior negotiations, representations, or agreements pertaining to the transaction contemplated herein, but has no effect on the Development Agreement to which the City and HBIA are parties or any other agreement pertaining to the development which HBIA has pursued or completed pursuant to the Development Agreement.
- 20. <u>Notices</u>. All notices to be given hereunder shall be in writing and may be personally delivered, mailed or sent by recognized overnight courier to the respective party at the addresses set forth below (either party may modify its addresses for notices by providing written notice to the other party). Any notice shall be deemed to have been given and received on the first to occur of: (a) actual receipt at the address set forth below, (b) the first business day after deposit with such a recognized overnight courier for delivery on the next business day, or (c) three working days following the deposit in the United States Mail of registered or certified mail sent to the address set forth below.

City:

City of Alameda 2263 Santa Clara Avenue Room 320 Alameda, CA 94501 Attn: John A. Russo, City Manager

With copies to:

City of Alameda 2263 Santa Clara Avenue Room 280 Alameda, CA 94501 Attn: City Attorney

Perkins Coie LLP Four Embarcadero Center Suite 2400 San Francisco, CA 94111 Attn: Cecily T. Barclay

HBIA:

Harbor Bay Isle Associates 1141 Harbor Bay Parkway, Suite 221 Alameda, CA 94502 Attn: Tim Hoppen

With copy to:

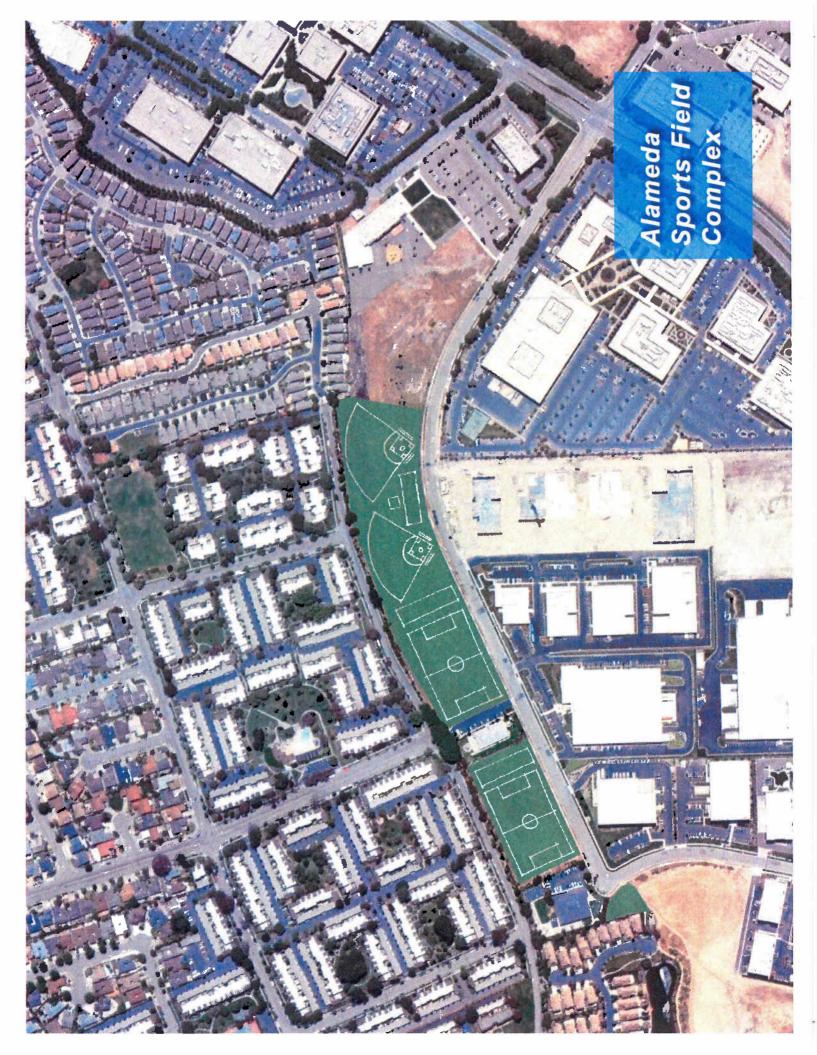
Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105-2482 Attn: Zane O. Gresham

- 21. <u>Time of the Essence</u>. Time is expressly declared to be of the essence in this MOA.
- 22. <u>Assignment</u>. HBIA shall have no right to sell, assign, or transfer its rights under this MOA to any third parties or entities.
- 23. <u>Signatures</u>. The individuals executing this MOA represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this MOA on behalf of the respective legal entities of HBIA and the City. This MOA shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the Parties do hereby agree to the full performance of the terms set forth herein.

CITY OF ALAMEDA	HARBOR BAY ISLE ASSOCIATES, a California General Partnership, by
By:	Doric Realty, Inc., a Corporation
Name: Marie Gilmore	
Title: Mayor	By:
Date:, 2011	Name: C. Timothy Hoppen
	Its President
	Date: 577 2, 2011
Attest:	
By:	
Name: Lara Weisiger	
Title: City Clerk	
Date:, 2011	4
Approved As To Form:	Approved As To Form:
Ву:	MORRISON & FOERSTER LLP
Name: Donna Mooney	
Title: City Attorney	By:
Date:, 2011	Name: Zane O. Gresham
	Title: Attorney For HBIA
	Date: 3/ 3/2/ , 2011

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CITY OF ALAMEDA

Memorandum

To:

Honorable Mayor and

Members of the City Council

From:

John A. Russo

City Manager

Date:

October 4, 2011

Re:

Accept a Report on the Status of the City's Athletic Fields

BACKGROUND

During the meeting of July 12, 2011, the City Council conducted an extensive discussion regarding a proposed exchange of property currently owned by Harbor Bay Isle Associates (HBIA) for the site of the Mif Albright 9-hole golf course. The proposal identified the HBIA site as providing space for additional athletic fields. The City Council directed staff to return in September with a report on the status of field space currently available in the city.

The City of Alameda through the Recreation and Park Department (ARPD) maintains, operates, and schedules 11 multi-use athletic fields, as well as three dedicated single sport sites. These facilities provide programming space for a wide variety of local non-profit sports leagues, the Alameda Unified School District (AUSD), and ARPD activities. These organizations currently serve over 9,000 youth and adults annually. Athletic fields are scheduled twice a year with the cooperation of the Field Advisory Committee (a group made up of local representatives from non-profit groups), as well as AUSD and City staff, in accordance with the priority system recommended by the Recreation & Park Commission and approved by the City Council.

The provision of safe and quality playing fields is an ongoing challenge due to the continued growth of youth sports in general and the rising popularity of girl's/women's sports in particular. The expansion of traditional seasons to near year-round status has also intensified the demand for field space. This constant need for field space severely limits the City's ability to rotate use and allow adequate time for fields to recover prior to the start of the next season. It also limits the City's ability to complete required repairs and renovations.

This ongoing shortage of fields also makes it difficult for the City to generate additional revenue through rentals to outside groups and organizations. A vast majority of the field time currently available is taken up by the programs offered by dozens of non-profit groups or AUSD-sponsored leagues.

DISCUSSION

Staff is in constant contact with local field user groups in an attempt to keep up with the demand for quality field space, identify future requests, and to identify potential solutions. In a recent survey, local non-profits were asked to identify their project needs for space over the next five years. Each of the six major youth sports organizations has projected an average increase of five to seven percent in participation and corresponding field needs.

These projected increases, along with the existing demand, clearly demonstrate the need for additional field space in Alameda. During a recent meeting with the Field Advisory Committee, the group unanimously agreed that their top priority is an all-weather full size facility. This space would provide use for football, soccer, lacrosse, rugby, and any other sport requiring a full sized (110 yard) field. It would also allow for play during inclement weather; something that is not currently provided by existing natural turf fields. Secondly, the group expressed interest in an all-weather Little League field, again to provide for play during wet weather.

FINANCIAL IMPACT

Under the proposal presented by HBIA during the July 12, 2011 City Council meeting, funding for these new fields would be provided by a one-time payment from HBIA to the City. The City has begun discussion with businesses in Harbor Bay Business Park about how to maintain these new fields in a way to avoid an impact to the General Fund. The estimated construction cost of the full sized, multi-use field is \$1 million, with an annual maintenance cost of \$25,000. The cost of the all-weather baseball field is \$400,000, with \$10,000 in annual maintenance expenses.

RECOMMENDATION

Accept a report on the status of the City's athletic fields.

Respectfully submitted,

Dale Lillard, Director

Alameda Recreation, Parks & Golf Operations

DL:bf

CITY OF ALAMEDA

Memorandum

To:

Honorable Mayor and

Members of the City Council

From:

John A. Russo City Manager

Date:

October 4, 2011

Re:

Adopt a Motion Approving the Major Deal Points for the Agreement with KemperSports for the Maintenance and Operation of the Chuck Corica Golf Complex and Directing Staff to Prepare a Lease Agreement for City Council

Consideration

BACKGROUND

On November 6, 2008, the City Council authorized the City Manager to enter into a one-year agreement with KemperSports Management to provide interim management of the Chuck Corica Golf Complex (December 2008-December 2009). The City Council also directed staff to research potential long-term solutions during this one-year management contract period. Further, during this interim period, the City would transition from City staff to contract staff at the Golf Complex.

In July 2009, staff prepared a Request for Proposals seeking a long-term operator to provide management, operational, and maintenance functions on a long-term lease basis. The City was also looking for a firm willing to invest much-needed funds in capital improvement, an investment the City had been unable to make for many years. The RFP was distributed to 65 firms in October 2009. As a result of the national economic market collapse and recession, only two firms in the industry submitted proposals, KemperSports Management and Bellows Golf Management/Landscape Golf Group.

Following an extensive review of both of the proposals, KemperSports Management was selected as the top firm based on its national experience and solid reputation in the field as well as its commitment to providing capital funding for critical improvements to the Golf Complex. This review, conducted by the then-Interim City Manager, found that Bellows Golf Management/Landscape Golf Group, in contrast, had less ability to invest funds in the Golf Complex and would have relied on the Golf Enterprise Fund Balance to support its capital expenditures. The City Council approved the selection of KemperSports Management on March 16, 2010, and directed staff to begin negotiations for a long-term agreement.

Between March 2010 and December 2010, the then-Interim City Manager and the Director of Recreation and Parks worked with KemperSports Management to develop a

City Council Agenda Item #6-Cii 10-04-11 number of scenarios for the future long-term operation of the Chuck Corica Golf Complex. The scenarios ranged from a no-change option, under which the City retained the services of Kemper under a management agreement, to long-term lease options for either 27 holes (with nine holes on the South Course closed) or 36 holes.

On January 25, 2011, the City Council held a special meeting on golf in order to discuss moving forward with a long-term lease of the facility. At that meeting, Mr. Ben Blake, Executive Vice President for KemperSports Management, presented two scenarios for the future operation of the Golf Complex as well as background information on the golf market in the Bay Area. No decisions were made at the meeting.

On April 12, 2011, the City Council held another special meeting on golf in order to discuss a revised Kemper proposal in which Kemper would have retained the existing 36-hole course configuration and made \$5.8 million of improvements to the golf courses and the driving range. Kemper would have funded the improvements to the Golf Complex through the use of the operating income from the course and would have contributed \$500,000 of its own money upfront to start the renovations in 2012. The renovations included work on the drainage and irrigation, renovation of the driving range, replacing the greens on the South Course, renovating the tees and bunkers on the South Course, and repairing the cart paths.

At the April 12, 2011 meeting, Mr. Tim Hoppen, President of Doric Realty (Harbor Bay Isle Associate, HBIA), asked the City Council to delay making a decision on the Kemper proposal and consider an alternative proposal in which the City would "swap" the Mif Albright 9-hole course for land that HBIA owns on North Loop Road. HBIA would then build housing on the Mif Albright property as well as a new short course on the existing South Course of the 36-hole property while contributing funding for sports fields on North Loop Road. The City Council agreed to delay its decision on the Kemper proposal in order to allow HBIA an opportunity to further develop its proposal and bring it back to the City Council for review and discussion.

The proposals submitted by both HBIA and KemperSports Management were discussed in detail during the City Council meeting of July 12, 2011. At that time the City Council adopted a motion directing staff to begin negotiations with both HBIA and Kemper and requested that the item be placed on a future City Council agenda for a detailed review and discussion. In addition, staff was also directed to provide a report on the current status of athletic fields.

DISCUSSION

Immediately following the July 12, 2011 City Council meeting, staff began negotiations with KemperSports Management regarding the operation of the Golf Complex and, separately, with HBIA regarding the proposed land exchange. The HBIA issue as well as the current status of athletic fields will be addressed in separate reports during the October 4, 2011 City Council meeting. This report focuses on the Kemper negotiations.

A number of discussions were conducted between the City Manager, Recreation, Parks & Golf Operations Director, the City's golf consultant, and Ben Blake of KemperSports. Items of focus included the amount of capital investment by both parties, terms of the agreement, rent payments to the City by Kemper, as well as the current rate structure and policies for juniors and local high school golf programs.

These discussions were very productive and have resulted in an agreement that is acceptable to both parties. A summary of the main deal points is outlined below:

RENOVATION INVESTMENT

- 1. The City and KemperSports shall share in the renovation cost, up to \$7 million.
 - a. The City shall contribute no more than \$3.5 million towards the renovation.
 - b. KemperSports shall contribute \$3.5 million towards the renovations. The first \$1 million shall be required at the inception of the new lease. The remaining \$2.5 million shall be funded by KemperSports during the construction period as per the following mandatory schedule:

<u>YEAR</u>	<u>AMOUNT</u>
2012	\$ 300,000
2013	\$ 400,000
2014	\$ 500,000
2015	\$ 600,000
2016	\$ 700,000
	\$2,500,000

c. The renovation is to be completed no later than July 1, 2018.

RENTS

- 1. KemperSports shall pay the City \$50,000 rent each year; prior, during, and after the construction phase.
- 2. Once the construction phase is completed, but beginning no later than July 1, 2018, KemperSports shall pay the City 7.5% rent on gross, or \$50,000 minimum, whichever is greater, up to \$4 million annually. KemperSports shall pay the City 10% on all revenues over \$4 million and up to \$5 million. KemperSports shall pay the City 12.5% on all revenues greater than \$5 million until the end of the 20-year term. Kemper Sports shall have the option to extend the lease for two additional five-year terms.

CAPITAL IMPROVEMENT FUND

 Once construction is completed, 4% of all gross revenues will be set aside for capital improvements. Once the total reaches \$750,000, no more money will be accumulated until it is drawn down below \$750,000. To qualify as a capital improvement project, a project must have a minimum value of \$7,500; otherwise, Kemper will be responsible for the repair of the project in the normal course of business.

RATES

- 1. The City Council shall approve resident rates on an annual basis. KemperSports may, but is not required to, increase resident rates by the most current CPI for the Oakland Metropolitan Area, or 4%, whichever is less. Such approval shall not be unreasonably withheld.
- 2. For the duration of the lease, KemperSports shall honor the current rate structure and policies for junior and local high school golf programs.

TERM

• The initial term of the lease will be for 20 years with two, five-year options for KemperSports.

KEMPERSPORTS' RESONSIBILITY

 KemperSports is responsible, at its sole cost, to maintain, repair, and operate the Golf Complex.

COMPARABLE COURSES

 Once construction is completed, KemperSports shall maintain and operate the facility in a condition comparable to Metropolitan Golf Links in Oakland and Monarch Bay Golf Club in San Leandro, CA. Failure to meet this standard will result in termination of the lease.

GOLF COMMISSION REVIEW

• On a quarterly basis, KemperSports shall prepare and present a report on its operations to the City's Golf Commission.

ASSIGNMENT

• KemperSports shall not assign this lease or the rights or entitlement, other than to an affiliate, without written consent from the City. Such consent cannot be unreasonably withheld.

In order to ensure that the proposed relocation of the Mif Albright Course and reconfiguration of the South Course are feasible, safe, and in compliance with industry standards, the plan was sent to an independent golf course architect and course designer for review. John Harbottle, a renowned golf course architect with many years of experience in designing and reviewing course layouts (Exhibit 1), toured the property and received the plan as submitted by HBIA. He then provided a comprehensive evaluation (Exhibit 2) of the proposed design along with some recommendations. A copy of his report is attached and a brief summary is outlined below:

- While the proposed design shortens the existing South Course (by approximately 300 yards) it will still be long enough for nearly all of the current clientele (95%).
- The proposed centerlines of the new fairways are in compliance with the minimum safety distances established by the National Golf Foundation (200 feet).
- Mr. Harbottle recommends shifting the tee area or providing buffers on the new number 7 hole in order to address any potential safety concerns.
- Mr. Harbottle concludes that the proposed new Par 3 course is much better and safer than the existing Mif Albright Course.
- Mr. Harbottle also concludes that the new design will be more efficient from an operational perspective and will blend nicely over time with the existing course.

FINANCIAL IMPACT

Acceptance of this proposal will insure that desperately needed capital improvements are completed in a timely matter with funding being provided equally by both parties. The proposed agreement calls for Kemper to provide payments of \$50,000 annually to the City during the construction phases of the renovation, with all construction to be completed by July 1, 2018.

Beginning when construction is completed or no later than July 1, 2018, Kemper will provide payments to the City in an amount equaling 7.5% on revenues up to \$4 million, 10% on revenues up to \$5 million, and 12.5% on revenues over \$5 million. All calculations are based on gross revenues. In addition, the \$50,000 minimum must be met in all scenarios.

Assuming an annual gross revenue figure of \$4 million is achieved, the minimum annual payment would be \$300,000. If gross revenue reaches the \$5 million level, the annual payment would be \$500,000; if the \$6 million level is achieved, the payment would be \$750,000. Again, all payments are in addition to the capital improvements.

ENVIRONMENTAL REVIEW

Should the plan be approved and move forward, KemperSports will be required to comply with all applicable State, County, and City permits as well has proceed through the City's planning process.

RECOMMENDATION

Adopt a motion approving the major deal points for the agreement with KemperSports for the maintenance and operation of the Chuck Corica Golf Complex and directing staff to prepare a lease agreement for City Council consideration.

Respectfully submitted

Dale Lillard, Director

Alameda Recreation, Parks & Golf Operations Director

Exhibit:

- 1. John Harbottle biography
- 2. John Harbottle evaluation of HBIA plan

John F. Harbottle III, ASGCA

John Harbottle was, quite literally, born into the game of golf. The son of Pacific Northwest Hall of Fame golfers, he turned his early love for playing into a career developing world-class golf courses. He is a member of the American Society of Golf Course Architects, which is comprised of the top golf course designers in North America.

After graduating from the University of Washington, he began his professional career in 1984 working on golf course construction and design with the legendary Pete Dye. Dye gave him the opportunity to work in both the office and in the field. There he learned the importance of spending time on site and of using a talented construction crew to perform the work. A library of classical golf architecture books by Thomas, Mackenzie, Simpson, Hunter, Ross and McDonald also had a profound impact on John's theories and style.

Early in his career, John traveled to the British Isles to study the great courses of Scotland and Ireland. He was inspired by the natural links courses and the way they were formed without the appearance of disturbing Mother Nature. Since that time, he has traveled the world, seeing many of its greatest courses. All these experiences have helped John evolve a design style and philosophy all his own.

His award-winning projects have won him acclaim by *Golf World Magazine* as one of the nation's "artists most in demand and builders of courses you'll most want to play", placing him among the top designers in America.

John's commitment to environmentally sensitive design has been nationally recognized with awards for achievements in the preservation of wetlands and other sensitive habitats, wildlife conservation, scenic beauty, playability, and tradition. He serves on the American Society of Golf Course Architects Environmental Committee and assisted with the production of the publication *An Environmental Approach to Golf Course Development*.

Considered a classicist in his renovation of existing courses, John has been trusted with restoring and updating Top 100 classics such as The Los Angeles Country Club, Stanford Golf Club and Eugene Country Club, among many others. His work on A.V. Macan courses is unsurpassed, having consulted on a dozen of Macan's courses, including Waverley, Broadmoor, Hillcrest and Manito.

John does not strive to put his signature or stamp on a classic course such as Kelowna, but rather wishes to restore its original character and style. He adheres to Macan's design principles and understands great design not only challenges a proficient player, but also allows the average golfer an opportunity to play their game. John has made a specialty of renovating courses and preserving their heritage while building layouts for the 21st century.

List of Selected New Projects:

ArrowCreek "Challenge Course", Reno, NV +++ BanBury Golf Club, Eagle, ID **** +++ Cinnabar Hills Golf Club, San Jose, CA *** Dairy Creek Golf Course, San Luis Obispo, CA Hawks Landing Golf Club, Madison, WI ++++ +++ Izatys Golf and Yacht Club "Sanctuary Course", Onamia, MN ++++ +++ Izatys Golf and Yacht Club "Black Brook Course", Onamia, MN ++++ +++ Juniper Golf Club, Redmond, OR **** **** +++ Monarch Bay Golf Club, San Leandro, CA ++++ +++ Palouse Ridge Golf Club, Pullman, WA *** **** ++++ +++ Ridgecrest Golf Club, Nampa, ID **** **** +++ Sunbrook Golf Club "Black Lava Course", St. George, UT **** The Resort Course at Genoa Lakes, Genoa, NV *** ++++ The Savannah Course at Stevinson Ranch, Stevinson, CA ** *** *** + +++ ++++ The Schaffer's Mill Club, Truckee, CA ** **** ++++ The Golf Club at Genoa Lakes, Genoa, NV **** **** +++ ++++ The Olympic Course at Gold Mountain, Bremerton, WA *** **** + *** + +++ ++++

List of Selected Restoration/Renovation Projects:

Big Canyon Country Club, Newport Beach, CA +++ Brentwood Country Club, Los Angeles, CA +++ Broadmoor Golf Club, Seattle, WA +++ Castlewood Country Club, Pleasanton, CA +++ El Caballero Country Club, Tarzana, CA +++ Eugene Country Club, Eugene, OR * **** ++ +++ Fircrest Golf Club, Tacoma, WA +++ Hillcrest Country Club, Boise, ID **** +++ Portland Golf Club, Portland, OR +++ Royal Oaks Country Club, Vancouver, WA **** +++ ++++ Salt Lake Country Club, Salt Lake City, UT +++ ++++ San Diego Country Club, San Diego, CA +++ San Joaquin Country Club, Fresno, CA +++ San Jose Country Club, San Jose, CA +++ Stanford Golf Club, Stanford, CA **** +++ ++ Tacoma Country and Golf Club, Tacoma, WA +++ Tamarisk Country Club, Palm Springs, CA +++ The Los Angeles Country Club "North Course", Los Angeles, CA * **** ++ The Los Angeles Country Club "South Course", Los Angeles, CA Virginia Country Club, Long Beach, CA +++ Waverley Country Club, Portland, OR +++

Awards

* Golf Digest "Top 100 in America"

** Links Magazine "Best of Golf Award"

*** Golf Magazine "Top Places You Can Play"

**** Golf Digest "Best in State"

**** Golf Digest/GolfWeek "Best New Courses in U.S."

+ The Golfer "Best New Courses"

++ Golf Magazine "Top 100 Public Courses"

Golf Magazine "Top 100 Classical Courses"

+++ USGA, PGA Tour, LPGA Tour or State Championship Course

++++ Audubon Sanctuary Award

John Harbottle Design

GOLF COURSE ARCHITECTURE

105 Country Club Circle SW Tacoma, WA 98498-5305 (253) 582-8058

Date: 9-15-11

To: David Sams

From: John Harbottle, ASGCA

RE: Chuck Corica Golf Complex South Course and Par-3 Renovation

Our study was made utilizing the Knott & Lynn renovation concept date April 15, 2011. We have completed the study of the proposed South Course and Par 3 course renovation project and offer the following opinion below.

South Course

We can understand the reluctance of some to the renovating of the golf course to accommodate a land sale. However, all the positive and negative aspects of the project should be weighed to determine if the changes make sense in the long run.

The existing course layout is comfortably routed over the gentle terrain. It looks like the South course sits on 135-140 acres. Large trees border the fairways. The holes are easy to walk and play to a par 71 of 6,586 yards. The proposed course becomes shorter (6,300 yards), losing almost 300 yards. It would play to a par of 70. Although it will not be the same challenge for the longer, more proficient players, it will be long and challenging enough for the average golfers (95% of your clientele).

Proposed new fairway centerlines are about 200 feet apart. The National Golf Foundation has published Golf Course Planning Criteria that suggests golf holes centerlines should be kept a minimum of 200 feet apart, so the new fairways meet NGF safety standards for design.

It appears existing holes Nos. 5 and 6 have fairway centerlines are that are approximately 200 feet apart. These holes could be a point of reference to illustrate how close the proposed fairways would feel. The proposed fairway relationships are tighter than the original holes, but they are no tighter than the relationship of other existing holes on the course.